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THE QUESTION OF UNAUTHORISED BUILDING: SOCIO-ECONOMIC,
LEGAL AND FISCAL ASPECTS OF THE ITALIAN EXPERIENCE

It has been asserted that Italy (with Rome setting the pace) is the European country most severely affected by the phenomenon of unauthorised building. As a result it might be felt that an illustration of the Italian experience before an International seminar such as this could be inappropriate, due to its particularity.

Yet the issue of unauthorised building also raises questions of general interest, such as the effectiveness of planning and control powers, the types of housing produced and their economic characteristics, the ability or inability of market forces or state subsidies to satisfy housing demand, and many others. These are problems that are relevant to all European societies.

Unlawful building is so widespread in Italy that it represents one of the most important factors in urban development over the last few decades. By virtue of its very nature, however, it is impossible to form a precise picture of the size and distribution of the phenomenon at a local level. An estimate made on the basis of figures provided by the last census suggests that 1.4 million housing units built between 1971 and 1981 were unlawful, that is, 31% of all housing built within that period.

The local effects of unauthorised building are so well known as to require nothing more than a brief mention here: on the one hand, urban sprawl, and on the other, the spoilage of the countryside and environment. Rome, Naples, Palermo and Agrigento are the most glaring - and internationally well known - examples of this.

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It should, however, be pointed out that unlawful building is not widespread in every region, or at least not to the same degree of intensity or with the same features. Looking again at the number of housing units built without authorization during the ten years between the 1971 and 1981 censuses, it is estimated that approximately 76% of them were built in the South, almost 10% in the Centre, and roughly 14% in the North. However, the respective percentages represent 60% of all housing units built in the South, almost 16% of those built in the Centre, and about 10% of those built in the North.

The recent history of legislation relating to town planning shows that the need to combat unauthorized development has never been lost sight of. The measures that have been introduced, however, have always proven to be overdue and ineffective.

The 1942 law compelled mayors to order the suspension of building work begun without due authorization and set a period of one month for the relevant decision. But mayors were hardly ever in a position to take the necessary measures in the time provided for, and consequently the suspension order lost its effectiveness. In 1967, however, fines were introduced as a way of discouraging unauthorized and unlawful building development and a ban was reintroduced to prohibit the parcelling out and allocation of plots of land, in the absence of an overall urban development plan. In 1977 law embodied a general attempt to tighten up this system of controls and penalties. In this respect, its main elements of originality consisted in making it obligatory for mayors to order the demolition of wholly unlawful buildings or, otherwise, in granting local councils the right to appropriate unauthorized constructions. A further innovation was the ban on public utilities (gas, water, electricity, etc.) supplying their services to unlawfully erected buildings.

Legislation has not, however, achieved the principal objective aimed at by progressive forces. Having grasped the fact that the main cause of imbalances in town development and of unauthorized building lies in the private ownership of land and on the vast profits to be made by building on formerly agricultural land, progressives kept stressing throughout the

sixties and seventies that the only way to exercise effective control over land use would necessarily involve freeing local development from the stranglehold of land property relations that encouraged speculation.

After the 1977 law came into effect, there was a widespread conviction that a separation between land property rights and land development rights had been ratified, and that the right to develop land had been transferred to the local authorities. Subsequently, however, this interpretation was refuted by the Constitutional Court. The failure to bring change into the structure of land ownership has represented a major defeat for town planning. Furthermore, following this setback, the system of sanctions designed to penalize those who operate unlawfully has been weakened.

Unauthorized building became a central issue of political debate almost two years ago, at a time when the central government was considering the possibility of legalizing (against payment) formerly unlawful building. This step was conceived as a way of balancing its budget deficit. The bill was supported by the Government despite the bitter criticism advanced by town planners and environmental bodies, but fortunately Parliament voted to throw it out. Just recently regulations relating to the legalization of unauthorized building have been accepted, but this time they form part of a more carefully thought out law, not wholly dictated by fiscal requirements.

The debate that accompanied the elaboration of the new law has made it possible to focus much more closely on the entire question of unauthorized building. As regards the underlying causes of the phenomenon, two distinct forms may be pinpointed: on the one hand, unlawful building undertaken with a view to property speculation, and, on the other hand, unlawful building to satisfy an immediate need for accommodation. The first type mainly takes the form of illegal parcelling out of land and in building for sale, the second in own home construction. Both forms of unauthorized building were generated by over-rapid urbanization processes, but whereas speculation has been fomented by the huge profits to be made out of the private ownership

of land, in the second case, unlawful building has been the almost inevitable response in the face of the failure of legal housing programs to satisfy the demand for accommodation.

The fact is that in Italy the rate of construction of public sector housing is thoroughly inadequate, and state-assisted building schemes are only accessible to those of the medium-high income bracket. Those whose demand for accommodation remains unmet tend, as a result, to turn to unlawful building as a solution. In this way they are able to evade tax charges for building permission, and to make major savings on general building costs, labour costs and costs of building materials, especially as a result of tax evasion; the overall saving may amount to 50%.

It is this analysis of the underlying causes of need-motivated unauthorized building that has made it possible to advance a number of criticisms of the town and housing policy pursued by the State and by local authorities. The following have been identified as contributory causes of this form of unlawful building:

- the structural shortcomings of the housing market;
- the high cost of building land;
- the plans of new urban centres, which provide for large (multi-family) housing blocks, without leaving any room for own home construction;
- long and tedious procedures.

Another vital topic relates to the urban recovery of illegal housing areas. This problem is particularly acute in Rome, where upwards of 800,000 people inhabit outer-city districts entirely built without permission being obtained. It has been clearly shown that the legalization of heretofore unlawful buildings must go hand in hand with their urban recovery, and, specifically, with the construction of the technical infrastructures and the local services and community centres that they generally lack.

A legal measure of the kind under discussion - and this was the third point raised - would have to be accompanied by the introduction of steps designed to eradicate the phenomenon alto-

gether. In other words, to accept the damage done to the land by unlawful building practices would have involved a considerable sacrifices that could only be borne providing a clear break with the past was made and a new era inaugurated. The legalization of unauthorized building could not in any case be granted in a wholesale way, given that the damage perpetrated to the historical, artistic and environmental heritage of the country was considered unacceptable.

The new law regarding legalization of unauthorized building is composed of four parts: regulations relating to the control of town planning and building practices; the streamlining of administrative procedures to do with town planning and building; the urban recovery of unauthorized districts; building work able to be legalized.

One of the central problems that the law has tried to tackle is the weakness of local government and civil service bodies. So far, this weakness has been most glaringly apparent in:

- the incompetence - and at times even the complicity - of the local government in the exercise of its powers;
- the inadequacy of the sanctions and the near certainty that those who act unlawfully will remain unpunished;
- the lack, in some parts of the country, of any kind of town planning.

In this connection, the law has given legal force to the principle that deeds of sale on buildings constructed unlawfully are null and void. This measure is felt by many to be the most effective way of wiping out unauthorized building.

The section of the law dealing with the urban recovery of unauthorized development areas is, without question, one of the weakest. Indeed, the envisaged restructuring and improvement of these areas will be unable to benefit from the income generated by the law to legalize unauthorized building, in spite of the fact that the costs entailed in the urban recovery of areas built unlawfully are extremely high. The case of Rome shows the way in which the dispersion of these unlawfully built areas generates major problems as regards the provision of and access to social services; they tend to lack pavements and car-

park areas, and in most cases they have come into being without the laying of drains or the installation of street lighting.

The recognized difference between unauthorized building prompted by need and motivated by speculation has been reflected in the size of the payment to be made to the Treasury in order to secure the granting of the retroactive legalization. The law in fact distinguishes two groups of persons: those who own and use as their principal dwelling a building erected unlawfully, and those who illegally construct units of housing that they then proceed to release onto market. The sum of money that the first group of people have to pay is in fact considerably lower than that paid by the second group. It should also be mentioned that the law provides a close definition of cases to which the legalization procedure may apply, specifying cases in which building work is deemed to be in any case unrecoverable.

To sum up, the law retains the fiscal approach to the problem of unauthorized housing, though this aspect is much less marked than in the earlier bill. This is also apparent in the fact that the fiscal contribution that this law makes to offsetting the budget deficit is much slighter than that originally envisaged. But despite the improvements made to the original text, considerable bitterness is provoked by a law that, in effect, rewards those who have acted unlawfully and accepts the irreversible damage done to so many important parts of the country. But what is most worrying of all is the possibility - by no means remote - that this law, by retroactively legalizing unauthorized building could trigger off expectations of further such measures, and, as a consequence, prompt a new wave of unauthorized development.

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**BUDOWNICTWO BEZ KONCESJI - SPOŁECZNO-EKONOMICZNE,
PRAWNE I FISKALNE ASPEKTY ZAGADNIENIA (DOŚWIADCZENIE WŁOCH)**

Zjawisko wznoszenia budynków bez odpowiednich koncesji stało się zjawiskiem powszechnym we Włoszech. Według danych szacunkowych opartych na ostatnim spisie, w okresie lat 1971-1981 zbudowano tutaj 1,4 miliona domów bez uzyskania niezbędnych koncesji. Jeśli chodzi o przyczyny tego zjawiska, można by wymienić dwie najważniejsze: wznoszenie budynków mające na celu spekulację nieruchomościami i budownictwo zaspokajające najpilniejsze potrzeby mieszkaniowe.

Sprawa ta stała się centralnym punktem debaty politycznej prawie dwa lata temu, w okresie kiedy władze centralne rozważały możliwość zalegalizowania wzniesionych obiektów nie posiadających wymaganych koncesji za odpowiednią opłatą. Posunięcie to miało pozwolić na usunięcie deficytu w budżecie. Debata jaka towarzyszyła opracowywaniu nowej ustawy pozwoliła skoncentrować uwagę na zagadnieniach bardziej ogólnych, takich jak efektywność planowania i uprawnienia kontrolne, typy produkowanych domów i ich cechy ekonomiczne, zdolność czy też niezdolność sił działających na rynku, a także dotacji państwowych zaspokojenia popytu na mieszkania, oraz innych zagadnieniach.

Mimo poprawek do tej ustawy wniesionych przez rząd, tak się stało, że nowe prawo wynagradza tych, którzy działali niezgodnie z prawem i akceptuje nieodwracalne szkody poczynione w wielu ważnych częściach kraju. Jednakże najbardziej niepokoi fakt, iż nowa ustawa, poprzez legalizację budownictwa bez koncesji w latach minionych, może stworzyć precedens na przyszłość i spowodować nową falę takiego budownictwa.